

CITY OF LEWISTON

CITY COUNCIL

AUGUST 14, 2007

EXECUTIVE SESSION HELD IN THE EXECUTIVE CONFERENCE ROOM AT 6:00 P.M.

THE HONORABLE LAURENT F. GILBERT, SR., MAYOR, PRESIDING.

PRESENT: Councilors Mendros, O'Brien, Jean, Samson, Paradis, City Administrator James Bennett, and City Clerk Kathleen Montejo.

The City Council meeting was called to order by Mayor Gilbert at 6:13 pm in a public session.

VOTE (217-2007)

Motion by Councilor Samson, seconded by Councilor O'Brien:

To enter into executive session pursuant to MRSA Title 1, section 405 (6) (D) to discuss Labor Union Negotiations regarding the American Federation of State, City and Municipal Employees (AFSCME Council # 93) Local 1458-00, on behalf of the Lewiston Public Works Unit; the Lewiston Police Supervisory Command Unit and the Maine State Employees Association.
Passed - Vote 5-0

Executive Session began at 6:15 pm and ended at 7:10 pm. Councilors Bernier and Rousseau arrived during the executive session.

REGULAR MEETING HELD IN THE COUNCIL ROOM AT 7:00 P.M.

THE HONORABLE LAURENT F. GILBERT, SR., MAYOR, PRESIDING.

PRESENT: Councilors Mendros, Bernier, O'Brien, Jean, Samson, Paradis, Rousseau, City Administrator James Bennett, and City Clerk Kathleen Montejo

Pledge of Allegiance to the Flag.

Moment of Silence.

VOTE (218-2007)

Motion by Councilor O'Brien, seconded by Councilor Jean:

To dispense with the reading of the minutes of the July 17, 2007, meeting and to accept and place them on file as prepared by the City Clerk. Passed - Vote 7-0

**AMENDMENT TO THE TRAFFIC SCHEDULE REGARDING PARKING
PROHIBITED ON A PORTION OF MAIN STREET**

VOTE (219-2007)

Motion by Councilor Jean, second by Councilor Paradis:

To approve the proposed amendment to the Traffic Schedule for a portion of Main Street which would prohibit parking from the southwest corner of Main Street and Wakefield Street, extending southerly on Main Street a distance of eighty-five feet. Passed - Vote 7-0

AUTHORIZATION TO ACCEPT TRANSFER OF FORFEITURE FUNDS

VOTE (220-2007)

Motion by Councilor Jean, second by Councilor Paradis:

That pursuant to Title 15, Maine Revised Statutes Annotated, Section 5824(3) and Section 5822(4)(A), the City Council hereby acknowledges and approves of the transfer of 13.34% percent of \$24,600, less administrative fees or any portion thereof, in the case of US Department of Justice Drug Enforcement Administration vs. Angela Sargent, CE-05-0021, N-66, 06-DEA-471915 and the transfer of eight (8%) percent of \$31,886, less administrative fees or any portion thereof, in the case of US Department of Justice Drug Enforcement Administration vs. Aaron Oliveira, CE-07-0027, N-1, 07-DEA-486971. Being funds forfeited pursuant to court process. It is further acknowledged that these funds shall be credited to the 'City of Lewiston Drug Enforcement Program', funds to be deposited in Account No. 590-3514050 at People's Heritage Bank. Passed - Vote 7-0

**APPROVAL FOR PLACEMENT OF TWO SPECIAL INTRA-COMMUNITY SERVICE
DIRECTIONAL SIGNS AT THE INTERSECTION OF ALFRED A. PLOURDE
PARKWAY AND RIVER ROAD**

VOTE (221-2007)

Motion by Councilor Jean, second by Councilor Paradis:

To authorize the placement of two intra-community service directional signs for the Environmental Depot to be placed at the intersection of Alfred A. Plourde Parkway and River Road. Passed - Vote 7-0

**BALLOT FOR 2008 SLATE OF EXECUTIVE COMMITTEE AND OFFICERS FOR
THE MAINE MUNICIPAL ASSOCIATION**

VOTE (222-2007)

Motion by Councilor Jean, second by Councilor Paradis:

To approve the slate of nominees as presented on the Maine Municipal Association Ballot for the Election of the 2008 Executive Committee and Others. Passed - Vote 7-0

**PUBLIC HEARING AND FINAL PASSAGE ON AMENDMENTS TO THE CITY CODE
FOR VEHICLES FOR HIRE**

Mayor Gilbert opened the public hearing. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing. Councilor Mendros stated he felt that to ban a driver with convictions of a class A, B or C crime is too broad, noting if someone sold fireworks when they were eighteen years old should not prohibit them from driving a taxi cab when they are forty years go. Mr. Bennett noted the charges must be rationally related to the operation of a taxi and there is an appeals board to review matters on a case by case basis. Council O'Brien noted these changes offer a good measure of protection to the customers.

VOTE (223-2007)

Motion by Councilor Samson, second by Councilor Jean:

That the proposed amendments to the City Code of Ordinances, Chapter 82 Vehicles for Hire, Article II, Taxicabs, Section 82-48, Standards for Denial, receive final passage by a roll call vote.
Passed - Vote 7-0

**PUBLIC HEARING AND FIRST PASSAGE REGARDING AN AMENDMENT TO THE
OFFENSES AND MISCELLANEOUS PROVISIONS ORDINANCE REGARDING
GRAFFITI VIOLATIONS**

Deputy City Administrator Phil Nadeau presented the background for this item and noted this ordinance was drafted after South Portland's ordinance. He highlighted the new graffiti wall space at the 12 Hour Club building on Lisbon Street and the amnesty program. He said there are no penalty provisions for private property owners to clean the graffiti from their buildings. Mr. Nadeau said people caught doing graffiti will be required to pay restitution to cover the costs of repainting, plus related fines. Councilor O'Brien inquired about a public education plan to let residents know about the program. Councilor Mendros expresses concerns about the ordinance language stating if evidence of graffiti related impalements are found with local youth, they could be fined. He stated some kids may be painting their vehicle and leave the supplies inside, noting they should not be charged, but under the ordinance, it appears they would be. He also expressed concerns over the high amounts of the fees, noting the parents will need to pay this for their children. He used the example of a youth frustrated with the current war in Iraqi, if their older sibling is overseas and the local youth is upset and expresses their anger in a non-violent way by spray painting "war" on a stop sign, they could be fined. Mr. Nadeau said the police officers can use their discretion in these matters as well.

Councilor Rousseau stated it was long over due and he is in support of the ordinance, noting he wishes there was citizen input on this item and recommended input from the Downtown Neighborhood Association. Councilor Bernier suggested a workshop on this ordinance first, noting there are too many questions such as the high penalties, impact on minors and their parents, enforcement, etc.

Mayor Gilbert opened the public hearing. Charles Soule of 180 Bartlett Street asked if a hopscotch game drawn with chalk on the sidewalk would be considered graffiti and suggested this ordinance would be too expensive for the city to enforce. Mayor Gilbert then closed the hearing.

VOTE (224-2007)

Motion by Councilor O'Brien, second by Councilor Bernier:

To continue this matter to the September 4 City Council meeting.

Did Not Pass - Vote 2-5 (Councilors Bernier and O'Brien in favor)

The City Administrator stated he understands there are questions and noted this is a comprehensive ordinance. He noted this is first passage and final passage is scheduled for three weeks, allowing enough time for staff to research the questions and to obtain a recommendation from the DNTF. Councilor Mendros echoed the suggestion of input from the DNTF.

VOTE (225-2007)

Motion by Councilor Rousseau, second by Councilor Samson:

That the proposed amendment to the City Code of Ordinances, Chapter 50 "Offenses and Miscellaneous Provisions", Article VII. "Graffiti Violations", Section 50-200 through 50-220, to create a new article regarding graffiti violations, receive first passage by a roll call vote and that the public hearing on said ordinance be continued to the next regular City Council meeting, that this item be forwarded to the Downtown Neighborhood Task Force for their review and input and that a report be presented to a City Council meeting in ninety days regarding the results of the ordinance. Passed - Vote 5-2 (Councilors Bernier and O'Brien opposed)

**PUBLIC HEARING FOR APPROVAL OF AN OUTDOOR ENTERTAINMENT
PERMIT FOR THE LEWISTON FARMER'S MARKET CONCERTS**

Mayor Gilbert opened the public hearing. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

VOTE (226-2007)

Motion by Councilor O'Brien, second by Councilor Mendros:

To conduct a public hearing on an application for an outdoor entertainment event for the Lewiston Farmer's Market concerts, and to grant a permit for an Outdoor Entertainment Event, as required by the City Code of Ordinances, Chapter 10, Article 1, Section 10-3, to the Lewiston Farmer's Market committee for outdoor music concerts for the Market to be held at Kennedy Park on Tuesday afternoons until October 30, 2007, contingent upon positive recommendations from the Police Department, Fire Department, Code/Health Officer and Land Use Inspector regarding compliance with all regulations and compliance with all City ordinances.
Passed - Vote 7-0

SPECIAL AMUSEMENT PERMIT FOR SPARETIME RECREATION

Mayor Gilbert opened the public hearing. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

VOTE (227-2007)

Motion by Councilor Samson, second by Councilor Jean:

To grant a special amusement permit for dancing and entertainment to Sparetime Recreation, 24 Mollison Way. Passed - Vote 7-0

SPECIAL AMUSEMENT PERMIT FOR THE CARRIAGE HOUSE PLUS

Mayor Gilbert opened the public hearing. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

VOTE (228-2007)

Motion by Councilor O'Brien, second by Councilor Mendros:

To grant a special amusement permit for dancing and entertainment to The Carriage House Plus, 1119 Lisbon Street. Passed - Vote 7-0

At this point, the Council took a ten minute recess and resumed the meeting at 8:45pm.

APPROVAL OF LANGUAGE ON A PROPOSED AMENDMENT TO THE ELECTION ORDINANCE REGARDING CITIZEN INITIATIVES AND PETITIONS AND AN ORDER FOR AUTHORIZATION TO SUBMIT QUESTION TO THE VOTERS

Councilor Mendros stated he felt some of the proposed ordinance changes will take rights away from the voters. Councilor O'Brien said she is against adding the word "current" into the budget because the citizens elect the Councilors to approve budget matters with public input. She stated it is the Council's job to put into effect necessary taxes that support necessary services. Councilor Paradis echoed her comments noting the Councilors take their jobs seriously and spend months reviewing and studying the budget before passage. Councilor Mendros mentioned that the amendments are so that ten people cannot effect the current budget since 1,800 signatures are needed. The City Administrator outlined the items that have already been discussed and agreed to at previous workshops, such as setting the number of required signatures at 15% of the votes cast as the last Gubernatorial election, outside circulation of signatures, and putting initiatives on the next available election ballot rather than the regular municipal election.

VOTE (229-2007)

Motion by Councilor Mendros, second by Councilor Jean:

To add back into the ordinance Section 32-34 "Amending and repealing matters enacted by the people". Passed - Vote 6-1 (Councilor O'Brien opposed)

VOTE (230-2007)

Motion by Councilor Mendros, second by Councilor Jean :

To add the word “current” in three places in Section 32-28 “Ordinances subject to initiative or referendum” regarding references to budgetary and tax matters. Did Not Pass - Vote 2-5 (Councilors Mendros and Jean in favor)

Mayor Gilbert stated he agrees with Councilor Mendros, noting that elected officials work for the people and the people have a right to veto any action their elected officials take, stating it is the people’s budget and the people’s taxes. He noted elected officials are here to serve and to let the voters have the right to petition for changes. Councilor O’Brien noted that elected officials are citizens and are selected by the citizens to represent them. She reminded everyone that citizens communicate with the elected officials all of the time, and certainly at budget time. Councilor Mendros pointed out that Maine residents have the right to petition the State on any budget related matter and there is even a new state law that requires residents to vote on the local school budget, so these actions are giving more power to the voters, not taking away like this proposal is suggesting.

At this point, the Mayor opened the floor for public comment and input:

Charles Soule of 170 Bartlett Street requested the City Clerk to read the entire proposed ordinance, for the benefit of residents watching on TV. The Mayor asked the Clerk to read the ordinance and declared a one minute recess.

Joseph Roy of 9 Venise Avenue spoke against the changes, saying these are taking the rights away from the voters, noting it only takes four Councilors to vote on the budget and other matters. He urged the Council not to pass this. Dot Treadwell of 106 Bartlett said she agrees with Councilor Mendros and she understands Councilor Bernier and Councilor O’Brien’s concerns. She expressed concerns of having her right of free speech taken away, noting that Councilors do not receive enough public input on most items they vote on. Larry Poulin of 394 Sabattus Street said there appears to be a fear amongst Councilors that ten voters could stop government, which is not true he stated, mentioning the threshold is set high with 1800 signatures needed to put on the ballot. He noted any items that go onto a ballot still need to have fifty percent of the voters vote for it to even pass, saying if any Council decisions are overturned by referendum, that it clearly was a wrong policy or decision of the Council in the first place.

James Lysen of 26 Taylor Hill Road said that something clearly needs to be fixed in the ordinance, but the rest is not broken. He said the Council should not fear having the public vote, saying not all of the public mistrusts government. He suggested the Council not rush to a decision on this item and since many of the Councilors will not be returning next year, to wait until new Councilors are elected this fall.

VOTE (231-2007)

Motion by Councilor Bernier, second by Councilor Mendros:

To postpone this matter until the new City Council is elected and in office, in January 2008. Did Not Pass - Vote 3-4 (Councilors Mendros, Bernier and Jean in favor)

Mr. Bennett suggested the option of having two questions on the ballot for November - one to address the items in the ordinance that everyone agrees to such as to allow for the outside collection of signatures, increasing the number of signatures, allowing for matters to be voted on at the next available election, and so forth. The second question could pertain to the issue of "current" budgetary matters. Councilor O'Brien noted this issue has been discussed at workshops several times by the Council already and it is clear that the Council has the authority to decide on budget matters.

VOTE (232-2007)

Motion by Councilor Paradis, second by Councilor Mendros:

To have two referendum questions on the November ballot - one would be for the language in the ordinance that is housekeeping matters and the second question would be for the Ordinance Section with the language regarding "current" budgetary matters as a second question on the ballot. Did Not Pass - Vote 3- 4 (Councilors Mendros, Jean and Paradis in favor)

VOTE (233-2007)

Motion by Councilor O'Brien, second by Councilor Rousseau:

Be It Hereby Ordered by the City Council that the proposed amendments to the Elections Ordinance regarding citizen initiatives and petitions be submitted to the voters at the Municipal Election to be held on November 6, 2007 and to determine the language on the ballot question at the September 4 City Council meeting. Passed - Vote 5-2 (Councilors Mendros and Jean opposed)

**ACQUISITION OF PROPERTY AT 69 KNOX STREET, DISPOSITION OF PROPERTY
AT 245 PARK STREET AND APPROVAL OF A CONSERVATION EASEMENT AT
61 KNOX STREET**

Councilor Rousseau recused himself from this item due to a conflict of interest.

Motion by Councilor O'Brien, second by Councilor Paradis:

To authorize the City Administrator to purchase the property at 69 Knox Street for the creation of a pocket park and to dispose of the city owned property at 245 Park Street, to grant a perpetual conservation easement to Lots to Gardens for the property at 61 Knox Street and to authorize the City Administrator to execute the Conservation Easement, in the form substantially as presented, for this property and that the City Administrator be and hereby is authorized to make, execute and deliver such deeds and other documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction.

Council discussed the motion and noted that everyone seemed in agreement with the issuance of the conservation easement but wanted more discussion regarding the acquisition and disposition of the other parcels. It was agreed to divide the question into separate motions. Mr. Bennett noted the parcel at 61 Knox Street will continue to serve as a community garden, regardless of ownership by Lots to Gardens or any other entity.

VOTE (234-2007)

Motion by Councilor Mendros, second by Councilor Jean:

To grant a perpetual conservation easement to Lots to Gardens for the property at 61 Knox Street and to authorize the City Administrator to execute the Conservation Easement, in the form substantially as presented, for this property. Passed - Vote 6-0

Councilor Mendros noted that another party had expressed interest in purchasing the property at 245 Park Street almost five year ago for \$25,000, a higher amount than is recommended in the proposed land trade. Mr. Bennett noted the Council voted one year ago to retain the property for any future development use. The proposal is to swap the parcels plus provide \$5,000 to cover legal costs and closing costs. The City would be acquiring a parcel of land to use for the new playground and \$10,000 donation for playground equipment. Councilor Mendros offered many ideas regarding new potential structures for the sale and purchase of these parcels. Councilor O'Brien noted the land swap is not for financial reasons but for community benefit, such as the playground. Councilor Bernier noted the many initiatives to improve housing in the downtown area and a new playground would complement these efforts.

VOTE (235-2007)

Motion by Councilor Paradis, second by Councilor Samson:

To continue this item to the next regular Council meeting. Passed - Vote 4-2 (Councilors Bernier and O'Brien opposed).

DISPOSITION OF PROPERTY AT 279 AND 283 BATES STREET

Lincoln Jeffers, economic development assistant to the City Administrator, made a presentation, noting this is part one of a two part item. He said the second part which is approval of a TIF will be on the September 4 agenda. This property is for the creation of new senior affordable housing in the downtown area.

VOTE (236-2007)

Motion by Councilor Samson, second by Councilor O'Brien:

Be It Resolved by the City Council that the City Administrator be and hereby is authorized to dispose of the city owned property at 279 and 283 Bates Street, and to execute the Agreement for the Purchase and Sale of Real Estate for this property with Deep Cove II, and that the City Administrator be and hereby is authorized to make, execute and deliver such deeds and other documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction. Passed - Vote 7-0

**RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT WITH THE
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME COUNCIL #93) LOCAL 1458-00, ON BEHALF OF THE LEWISTON
PUBLIC WORKS UNIT**

Human Resources Director Denis Jean outlined the highlights of the contract such as a two tier health insurance proposal, a 2.2% salary increase and the elimination of double time on Sundays and holidays.

VOTE (237-2007)

Motion by Councilor Samson, second by Councilor O'Brien:

To ratify the Collective Bargaining Agreement between the City of Lewiston and the American Federation of State, County and Municipal Employees (AFSCME Council #93) Local 1458-00, on behalf of the Lewiston Public Works Unit, said agreement being for the period of July 1, 2007 to June 30, 2010, and to authorize the City Administrator to sign the agreements on behalf of the City of Lewiston. Passed - Vote 7-0

**RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT WITH THE
LEWISTON POLICE SUPERVISORY COMMAND UNIT**

Human Resources Director Denis Jean outlined the highlights of the contract such as a 2.2% salary increase and other items.

VOTE (238-2007)

Motion by Councilor Samson, second by Councilor Jean:

To ratify the Collective Bargaining Agreement between the City of Lewiston and the Lewiston Police Supervisory Command Unit, said agreement being for the period of July 1, 2007 to June 30, 2010, and to authorize the City Administrator to sign the agreement on behalf of the City of Lewiston. Passed - Vote 7-0

**RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT WITH THE MAINE
STATE EMPLOYEES ASSOCIATION**

Human Resources Director Denis Jean outlined the highlights of the contract such as changes to the retirement health savings program and changes to health insurance coverage.

VOTE (239-2007)

Motion by Councilor O'Brien, second by Councilor Mendros:

To ratify the Collective Bargaining Agreement between the City of Lewiston and the Maine State Employees Association, said agreement being for the period of July 1, 2007 to June 30, 2010, and to authorize the City Administrator to sign the agreement on behalf of the City of Lewiston. Passed - Vote 7-0

**AMENDMENTS TO THE PERSONNEL POLICIES REGARDING THE SICK LEAVE,
VACATION LEAVE AND RETIREMENT HEALTH SAVINGS POLICIES**

It was noted these items are necessary due to recent changes in the IRS regulations and rulings.

VOTE (240-2007)

Motion by Councilor O'Brien, second by Councilor Paradis:

To approve the amendments to the Personnel Policies for the sick leave, vacation leave and retirement health saving policies, as recommended by the Human Resources Director.

Passed - Vote 7-0

NOMINATIONS TO THE ANDROSCOGGIN COUNTY BUDGET COMMITTEE

VOTE (241-2007)

Motion by Councilor Paradis, second by Councilor O'Brien:

To postpone this matter to the September 4 City Council meeting when the names of candidates nominated at the county caucus are known. Passed - Vote 7-0

EXTENSION OF THE CITY ADMINISTRATOR'S EMPLOYMENT AGREEMENT

Dan Gregoire of 19 Mitchell Street stated he thought this was a six year contract which is very long. It was noted that four and a half years remain on the contract and that four Councilors can vote to buy out the contract at anytime. Councilor Mendros noted the City Council agreed as a Council on the items in the contract and that it protects the City, noting if someone has job security they are not looking for alternatives but are focusing on their work. Councilor Mendros also mentioned the 2.2% increase is in line with other employees.

VOTE (242-2007)

Motion by Councilor O'Brien, second by Councilor Samson:

Be It Resolved by the City Council that the Council hereby approves a one year extension to the term of the City Administrator's Employment Agreement, between the City of Lewiston and James A. Bennett, a 2.2% adjustment to salary, an increase in vacation accrual to 25 days per year, a realignment of when vacation is accrued and new language to deal with the IRS issue for the retirement health savings. Passed - Vote 7-0

REPORTS AND UPDATES

No reports or updates were presented at this time.

OTHER BUSINESS

VOTE (243-2007)

Motion by Councilor Bernier, second by Councilor O'Brien:

To approve the request for the placement of signs on the traffic island on Main Street for the promotion of the upcoming Greek Festival. Passed - Vote 7-0

Joseph Roy of 9 Venise Avenue said that he has a statement to read regarding research he has done on the Casella Waste Corporation, but will wait until a future meeting since it is late.

VOTE (244-2007)

Motion by Councilor Paradis, second by Councilor Mendros:

To adjourn at 1:30 A.M. Passed - Vote 7-0

A true record, Attest:

Kathleen M. Montejo, CMC
City Clerk
Lewiston, Maine